FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 28 1960
JAMES R. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 468

BENJAMIN D. RITHOLZ,

Petitioner

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

Petition for Writ of Certiorari To the Supreme Court of the State of Michigan

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PAUL L. ADAMS
Attorney General of the State of Michigan

SAMUEL J. TORINA
Solicitor General of the State of Michigan

Counsel for Respondent

The Capitol, Lansing 2, Mich.

SPEAKER-HINES AND THOMAS, INC., LANSING, MICH. — 1960

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 468

BENJAMIN D. RITHOLZ

Petitioner

vs.

THE PEOPLE OF THE STATE OF MICHIGAN

Respondent

Petition for Writ of Certiorari To the Supreme Court of the State of Michigan

---

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

STATUTES INVOLVED

joining room when he conversed with Dr. Feiler on January 12. The petitioner telephoned Dr. Feiler and told him of this information (191a).

Prior to March 27th there was a telephone conversation between Dr. Feiler and the defendant and they arranged a meeting in Detroit for March 27th and 28th. Dr. Feiler testified that petitioner telephoned him stating he would be in Detroit on those dates and requested him to meet him there (192a). The petitioner testified that Dr. Feiler called him (192a). On cross-examination, when the defendant's telephone number was brought out, petitioner admitted telephoning Dr. Feiler and talking to him for 21 minutes on March 22nd (540a); on March 24th for 5 minutes; for 5 minutes on March 25th (541a); and for 8 minutes on March 26th (541a). The petitioner sought to explain these calls to Dr. Feiler saying they had an arrangement which had existed for several years that when Dr. Feiler called him collect, he would refuse to accept the call and later call Dr. Feiler back (541a).

On March 27th the petitioner telephoned Dr. Feiler at his hotel room in the Sheraton-Cadillac hotel and expressed a desire to meet with him to discuss the Sanchick case (192a). Dr. Feiler informed the members of the board of the call and went to the petitioner's room at the Statler Hotel (192a-193a-194a). There Ritholz asked him to see what he could do about getting the Sanchick case washed out and said that it would be worth one thousand dollars (194a-195a). Dr. Feiler replied he didn't think he could help and Ritholz said he wanted to meet Dr. Feiler the following day for a further discussion. Feiler agreed to meet him and left (195a). He reported this to the Optometry Board in the morning of March 28th and was advised by the board and Detective Sergeant Chrispell to have no further contact with the defendant (195a). Later on

March 28th, he received a call from the petitioner who expressed the desire to meet him and further discuss the Sanchick case. Feiler told the petitioner he could not do anything for him and that he was going shopping (196a). Petitioner asked him where and Feiler gave him the name of the store (196a). Subsequently Feiler went shopping at Harry Suffrin's store in Detroit. The petitioner entered and motioned him to follow (197a). He did so. Petitioner entered a men's room, looked to see if anyone else was present, took an envelope, placed it in Feiler's coat pocket and said "see what you can do. Wait a few minutes after I leave and then you can go" and left. Feiler waited a moment, left the store and returned to his hotel room and there found $500 in currency in the envelope (197a-480a). He returned to Flint (197a), kept the money until September 20, 1955, when he reported this event to an Assistant Attorney General and turned the money over to the State Police (200a). The $500 was admitted in evidence on the trial, without objection (201a-202a). As a result of his receiving this $500 and failing to report it to the Optometry Board or law enforcement officials until September, 1955, he was removed from office by the Governor (306a-307a).

Ritholz testified that Dr. Feiler came to his room on this occasion, March 27th, (476a), told he was being watched and would talk fast (476a); that Dr. Feiler told him he had one board member in his pocket and needed one more and thought he had him sewed up; that he told him that board member was in town and he wanted to take him out and show him a good time and that would provide three board members to clean up the situation and keep him in good shape; that Dr. Feiler then asked him for $500 to entertain the third member; that he agreed to give Dr. Feiler the $500, but did not have it on his person and promised to deliver it the following day (477a). He further testified that Dr. Feiler talked to him the following after-

noon and told him he was going shopping, gave him the name and location of the store and requested him to meet him there (477a); that he went to the store, saw Dr. Feiler on the first floor (478a); that Dr. Feiler motioned him toward the lavatory and that he followed Dr. Feiler there, that there was no one else present (478a). He further testified that Dr. Feiler pulled out his overcoat pocket and that he placed an envelope containing $500 in Dr. Feiler's pocket (480); that Dr. Feiler left immediately (272a-274a) and that no words were spoken by either party on this occasion (480a).

The petitioner testified that he did not recall hearing from Dr. Feiler again until June (481a-482a), however, on cross-examination when the telephone numbers were supplied, the defendant recalled telephoning Dr. Feiler on March 30, April 22, and May 17th.

In April 1955, the petitioner instituted suit in the Federal Court for the Eastern District of Michigan against all of the members of the Michigan Board of Examiners in Optometry, individually, and many other optometrists, alleging a violation of the Clayton Anti Trust Law and claiming damages and costs in the sum of $1,000,000.00 (481a-531a-536a).

Both Dr. Feiler and the petitioner testified to a telephone call on about June 17, 1955, wherein Ritholz made inquiry regarding the status of the Sanchick case; that Dr. Feiler told the defendant there was nothing he could do, or words to that effect. (204a-205a-206a-543a).

Dr. Grigware, a People's witness, testified that June 14, 1955 petitioner telephoned and told him Dr. Sanchick was unhappy with the proceedings of the Optometry Board and asked him to see what he could do to have those

charges dropped. He offered to refer several hundred patients a year to Dr. Grigware from his Grand Rapids office (314a); that Ritholz further said that he had enough power in the Senate to prevent future appointments to the Optometry Board of anyone recommended by the Michigan Optometric Association or Governor Williams. (page 7b)

Dr. Feiler testified that on July 20th petitioner telephoned him and asked him if there was anything he could do to wash out the Sanchick case and that when he replied in the negative, petitioner said he was going to start taking depositions in the Federal Court case against the board members the following week (206a-207a). He further testified that he received telephone calls from the petitioner Ritholz every day for several days in succession wherein Ritholz said he wanted the Sanchick case washed out, mentioned the Federal Court case, and said that the attorneys would become wealthy as a result of the squabble between himself and the Optometry Board, and that he reported the substance of these telephone calls to police officers (207a-208a).

On August 3, 1955, Dr. Feiler, at the request of an Assistant Attorney General, went to the Olds Hotel in Lansing, met with Dr. Howe, secretary of the Optometry Board, Detective Lt. Donald Berry of the Michigan State Police, Inspector Karl Braun, Optometry Board investigator, and Irving B. Beattie, an Assistant Attorney General; that he reviewed his recent conversations with the defendant Ritholz, and stated that Ritholz expressed a desire to come to Michigan to offer a bribe and had requested him to call him back (208a). At the suggestion of Mr. Beattie, Dr. Feiler telephoned the defendant in Chicago. This call was monitored by Detective Lt. Berry on an extension telephone (211a). Dr. Feiler and Lt. Berry testified that Dr. Feiler told Ritholz he was getting things lined up (210a-420a)

and asked him when they could meet; that the petitioner requested a meeting at Detroit on Sunday, August 7th, at the Statler hotel (420a). Dr. Feiler asked the petitioner if he was bringing the stuff with him and petitioner replied he was not paying until the goods were delivered (420a); that the petitioner said "I have a big stick in one hand and kid gloves in the other and I would rather handle this with kid gloves;" (420a). He warned Feiler to be careful what he said on the telephone "because they have these damned rooms 'bugged;" (420a); that Dr. Feiler asked Ritholz if he wanted three members of the Board to meet with him and that petitioner replied "don't be a damn fool. This is between you and I. If there is anybody else in the deal they'll be taken care of" (420a). Petitioner suggested the use of a middleman and suggested first one of his own attorneys in Detroit (421a) and then gave the names of three State Senators (211a). He stated that he wanted to meet Feiler in Detroit on August 7th (211a). No sum of money was mentioned in this conversation (421a). Ritholz did most of the talking. The petitioner agreed that this testimony was correct (484a).

On August 4, 1955, Ritholz telephoned Dr. Feiler (212a) and voiced his suspicions because Dr. Feiler had not mentioned the Federal Court case in the conversation of August 3rd, and inquired as to whether or not he wanted that case dropped (212a).

On August 5th, Lt. Berry testified that Dr. Feiler reported this conversation to him (421a).

On August 5, 1955, petitioner telephoned Dr. Feiler and confirmed the time and place of meeting on August 7th. He requested Dr. Feiler to bring the other two board members with him (213a).

The substance of this conversation was reported to Lt. Berry by Dr. Feiler (421a).

Blackwell, a Pinkerton agent, testified that on August 4th petitioner had one of his attorneys contact Burns and Pinkerton detective agencies (512a-367a), that on August 5th, the petitioner engaged the services of Pinkerton Investigators (268a); that petitioner represented to this agency that a Dr. Julian might try to shake him down in a business deal (369a); that Dr. Julian was not a public official or a part of State government (370a,545a), and that he wanted a recording of an anticipated conversation for future reference for whatever purpose he desired to use it (547a-590a). Ritholz admitted he did not give the Pinkerton investigators any information of any previous alleged acts of extortion or any details (544a).

Petitioner was present at the Statler hotel on Sunday, August 7, with three Pinkerton Investigators who had set up a recording machine (346a). The anticipated visitor did not arrive and the petitioner telephoned Dr. Feiler's home and Dr. Feiler finally returned his call (347a). This telephone call was monitored by Lt. Berry (215a-422a); and the petitioner agreed that the substance of the conversation was correct (546a-547a). The petitioner asked Dr. Feiler why he had not come to Detroit and Dr. Feiler replied that he could not get the board members together (215a). The petitioner then suggested a meeting the following day at the Olds Hotel in Lansing (216a-546a). He said he had to make reservations and would call back in fifteen minutes (216a). Petitioner Ritholz called back and informed Dr. Feiler that he had his suite at the Olds and for him to bring the other board members and meet with him at 8:30 on August 8th (216a-422a). Dr. Feiler asked if this was final and if he had the stuff with him and the petitioner

warned Feiler that someone might be listening on the telephone (422a). Ritholz then directed the Pinkerton investigators to meet him at the Olds hotel on August 8th and to register under fictitious names (372a).

On cross-examination the petitioner admitted that he never reported any of these alleged acts of extortion to law enforcement officials of Illinois, Michigan, or any other place, and when he was questioned regarding that replied as follows:

"A. I reported nothing to the police. I intended to report to the police on August 9th.

Q. In other words, the day after you were caught?

A. Yes. I wasn't ready to present my case to the police."

THE BRIBERY TRANSACTION

On August 8, 1955, at the request of State Police, Drs. Howe, Grigware, and Feiler met with State Police detectives and an Assistant Attorney General, Irving Beattie, at the Kellogg Center in East Lansing in the early evening (289a-315a-217a-423a). At this time Dr. Feiler and others reviewed recent events. All persons present were informed of Ritholz's request for a meeting at the Olds Hotel at 8:30 p.m. (217a). The three doctors were given general instructions and were advised that if Ritholz requested them to wash out the Sanchick case, they could agree for the purpose of obtaining evidence, and were instructed to accept any money Ritholz offered and turn it over to police officers who would be stationed in a room adjoining the Ritholz suite (316a). Drs. Howe, Grigware, and Feiler went to the Olds Hotel and there met State Police detectives, were searched, their money counted. They then

proceeded to the Ritholz suite under observation of the police (291a 292a 424a).

The three doctors were admitted to the suite by Ritholz and a conversation ensued between the petitioner and the three members of the Optometry Board (424a). Ritholz did most of the talking and explained the purpose of the meeting, stating that it was called to see if there could be a truce (549a). He told the board members to forget that he was a lawyer as he did not practice law (541a-570a). He referred to the Federal court suit in which the board members had been joined as parties defendant and said that the lawyers would become wealthy and further stated,—"so here we are in the middle with these bastards—cleaning up on both of us," (551a). Ritholz brought up the name of Edwin L. Sanchick (551a) who rented space from him in the Tussing Building in Lansing, and to whom the King Optical Company referred persons who responded to their newspaper advertisements, and said he wanted the Sanchick case called off; that he wanted peace (552a). He assured the board members that they had nothing to worry about because if he made trouble for anyone he would make trouble for himself, get publicity and it would ruin his business (553a). He said he didn't want to try anything. He wanted to go home and take care of his business (554a). He then said he was going to spend money on lawyers and that he would rather spend it some other way and asked the board members whether they wanted him to discuss it with all of them or with Dr. Feiler (555a). Dr. Feiler suggested that it be discussed with all of them and Ritholz then said that he was prepared to pay them $5,000 (555a); that this was the sum he had allotted to spend and that he would rather give it to them than spend it on lawyers (556a). Dr. Grigware inquired what Ritholz wanted in return and Ritholz said he wanted the Sanchick case washed out (556a). Dr. Howe

then inquired what the board members would get in return and Ritholz said the Federal case would be washed out too. (556a). Ritholz then told the board members they would not be able to hold the hearing on the Sanchick case as scheduled on August 16th when there was a stay of proceedings (557a). Dr. Grigware said that Mr. Moule, an assistant attorney general, had never informed the board of such stay of proceedings (558a). Ritholz said they had better check with Mr. Moule, for $5000 and then said he would go another $1000 to make it even (558a-559a).

Ritholz then suggested that Sanchick's attorney file a motion to dismiss on the ground the complaint did not make out a cause of action (559a). He further said there would have to be a show of good faith (561a); said he would draw up a dismissal of his federal court case and deposit it with the attorneys and that he would call the attorneys and immediately call off the hearings in the Federal court case (563a). Ritholz made notes of things to be done (566a-569a) and Dr. Feiler sat next to him and copied his notes (566a). Ritholz suggested that the Sanchick case be washed out by the board on an informal hearing (221a) and assured the board members that no one would interfere with them, saying that pressure had been put on Lt. Governor Hart and Deputy Attorney General Gilmore but that he could pull the pressure off. He named senators whom he claimed put on this pressure and said "This is a nice clean way for everybody" (570a). He went on to say that he wanted to operate in Michigan and wanted to operate as legally as he could; that he had no horns, and that life was too short (570a-571a). And he continued by saying that he would fight if he had to fight; that he had lots of pep and said, "Jesus, I'll handle this case if it takes me six years and every State in the United States" (572a). He then said it would be better to avoid this as it would be like a war with

atomic bombs; that if he won he would lose (572a). And he again suggested that the board hold an informal hearing and wash out the Sanchick case (572a). He said he had Dr. Howe down for two days testimony on deposition in the Federal court case but that he wouldn't get through with him in two days, that it would take two weeks (575a). He then said he would deliver the money the following day (575a 577a); that he thought Dr. Feiler was kidding because he didn't show up in Detroit and he didn't think anyone would ever show up (576a). Ritholz then suggested various means of delivery of the money (578a). He said he had $500 with him (578a); that the board members could have that on account and that he would deliver the balance the following day (578a); that there would be no need for a hotel room as he could give it to them in a restaurant anywhere (578a). He assured them all he would take care of payment and again reiterated his proposal by saying that he would give them $5,000 if they would wash out the Sanchick case and find that they could not hold a hearing (579a); that they would be in contempt of court (579a); he then raised the amount to $2,000 each so it could be split even and then inquired "You fellows trying to pull something now?" (579a). Dr. Feiler replied "yes" (579a). He then handed three one hundred dollar bills to Dr. Feiler who in turn handed $100 each to Dr. Howe and Dr. Givigware (319a 319a 580a). Dr. Howe put the $100 handed to him on the couch (580a-581a). Ritholz picked it up and handed it back to Dr. Howe and told him he wanted him to have it (581a). Ritholz then suggested that the board cooperate with him and let him know if they thought that he had done anything wrong and that he would also cooperate (581a). He then suggested that he could send a certified check for the balance payable to a fictitious person and that it would be as good as cash and suggested as an alternative "I can meet you in a

restaurant; we go in a toilet, and I throw it in your pocket. That's all. Simple, isn't it?" He then asked Dr. Feiler if he could deliver the balance of the money to him and Dr. Feiler agreed. Ritholz then said he would call Dr. Feiler the next night and would tell him some restaurant and in two minutes he would be on his way home (582a-583a). He then asked the board members if they trusted him for dismissal of the Federal court case; was given assurance that they did. (584a-585a-586a). The notes detailing the transaction made by Ritholz and Dr. Feiler were completed and Dr. Feiler's notes were admitted in evidence on the trial (223a). The notes made by Ritholz were never found by police officers. Ritholz testified he left the notes in the hotel suites and later on cross-examination he testified he didn't know what had become of the notes (589a). Ritholz then said, "All right, are we set?" Dr. Howe said "Yes." Ritholz said, "All right, I got it all written down and you've got it all written down. Tomorrow night I will meet you in Flint and you can trust me." He then said "You don't think I am trying to screw anybody. I would only be screwing myself. I want peace that's all, and if anything comes up, Doctor, where you think something has gone wrong, tell me." (588a). Ritholz then explained how he used to fight with the Better Business Bureau, but that now they called him and he straightens it out (589a). Ritholz then said "That's all" (589a). Drs. Howe, Grigware, and Feiler, then bade him farewell and Ritholz said "Okeh, see you tomorrow. I am happy with this." (589a).

Drs. Howe, Grigware, and Feiler left the Ritholz suite and went immediately to the adjoining room occupied by State Police detectives and turned over the one hundred dollar bills they had received (320a). State Police Detective Lt. Sheridan and Sergeant Chrispell went to the Ritholz suite, identified themselves as police officers, were

admitted by Ritholz and placed him under arrest for violation of the bribery statutes (401a-403a). Having information that the suite had been registered in two names, the officers asked Ritholz if anyone was with him (401a). He told them he had his own policemen (401a). Ritholz then knocked on the connecting door of his suite, according to a prearranged signal, and some Pinkerton agents came out the door (402a). Ritholz was handcuffed to one of them but when the Pinkerton agents identified themselves, the handcuffs were removed (442a).

Mr. Higgins, the Pinkerton agent in charge of the detail, turned over the recorder and recordings to the police (402a-427a) and explained that the petitioner had told them that he expected a Dr. Julian to attempt to extort money from him and that he wanted their services to prevent the extortion and that they were retained to take a tape recording of a conversation and to turn it over to Ritholz for his "future reference." (345a-349a).

The defendant Ritholz was taken to the Michigan State Police Headquarters by Det. Lt. Berry. (427a)

On his arrival at State Police Headquarters the defendant was searched by police; then questioned by an assistant attorney general about fifteen minutes later (592a). The petitioner refused to answer whether he gave any money to any members of the Optometry Board that evening, stating he was an attorney, a member of the Chicago Bar and American Bar Associations; was without an attorney and that all questions might tend to incriminate him. (593a-594)

The defense made an opening statement detailing its theory that the petitioner did not intend to bribe on August 8, 1955, but only to comply with the last of a series of

extortion demands by Dr. Feiler for the purpose of obtaining evidence to turn over to authorities the following day, and outlining its claim of previous specific instances of extortion it expected to prove (445a).

Petitioner took the stand in his own defense, and on cross examination admitted the bribery of the state officials (505a to 591a). He also admitted he wanted to have the Sanchick case washed out (591a).

There is a great deal of testimony in the record regarding other previous relationships between petitioner and Dr. Feiler which we believe are well covered by the Supreme Court of Michigan in its opinion, which we believe are immaterial here.

QUESTION PRESENTED

Respondent claims that he was convicted in violation of the Due Process Clause of the Fourteenth Amendment. This claim he bases upon the assertion that he was induced to commit bribery by state officials.

We respond as follows:

1. Respondent, in the course of the trial, adopted two conflicting and inconsistent theories in his defense.

(a) On the one hand he claimed that he arranged the bribery transaction himself in order to entrap certain state officials who had been extorting money from him for years.

(b) On the other hand, he claimed that the bribery transaction was engineered by State officials in order to entrap him.

The Supreme Court of Michigan, we believe, in its opinion, rightly characterized petitioner's first claim as verging on the incredible. It stated:

> "We have examined the remainder of the alleged errors made, including those relating to evidentiary matters, the charge, and to the prosecutor's cross-examination of the defendant, as well as his final argument, and find they are without merit. * * * Defendant's account of the extortions practiced on him, over a period of years, suffered by him in silence, verges on the incredible. He argues that he did not complain to the police of them because his word alone would not have been effective. A citizen's failure to report crime is not excusable by reason of such assumption on his part. We note, also, that at no telephone conversation (between Dr. Feiler and defendant) monitored by the State police do we find complaints of past extortions by defendant, though he testifies he made them in abundance at conversations unheard by others. Thus the conversation held on January 12, 1955, in the Sheraton-Cadillac hotel in Detroit, heard in its entirety by the police (and the first monitored conversation) has a significance beyond that of its actual content. Up to this point defendant's versions of the meetings held with Dr. Feiler have been replete with his (defendant's) protests against the 'shakedowns' to which he was allegedly being subjected. Yet, although we have examined the police versions of this conversation with care, the testimony of the officers, Van Wie, Bogan, and Chrispell, we find it to be utterly barren of reference to past extortions, shakedowns, or other coercion practiced upon defendant by Dr. Feiler. (*Rather, it is defendant who is aggressively demonstrated that Dr. Feiler have the Sandlick case 'washed out,' not only for a money reward, but, if not, under peril*

of receiving the same kind of legal harassment as defendant had, in his own words, exercised against officials of the State of Indiana.) The picture, in short, is not that of a public officer exercising the powers of his office for purposes of intimidation and coercion, but rather that of a citizen demanding that official action cease, both for reward and under threat.

"The Olds hotel incident was, as we have noted, likewise barren of such accusations on the part of the defendant, though his bargaining was frank enough to include other considerations, including the dismissal of the Federal case by defendant. Finally, regardless of the merits or demerits of Dr. Feiler, we do not overlook the fact that money was offered to the other members of the board, whose connection with any extortion was far more tenuous than that of Dr. Feiler, if indeed, it can fairly be said to have existed at all. The case was carefully tried by competent counsel. The evidence adduced against defendant was ample to justify the verdict reached. We find no substantial error in the case and no need to discuss additional claims of error." (Emphasis supplied)

With reference to the second claim, defense counsel, as admitted by the petitioner, did not argue the matter of entrapment to the jury (petitioner's brief p 14).

Moreover, defendant counsel clearly showed his intent to abandon the defense of entrapment when he stated to the jury in his final argument: (669a-670a)

"Now, he [Ritholz] goes to the hotel suite with the intent to bribe, and this is the thing, and he doesn't have but $500 in his pocket to pay money, which, as

the testimony appeared, they wanted then and there, based on an understanding of $9,000.

"Now, when he was there, when he passed over the money, did he do it corruptly, to bribe these gentlemen, wilfully and corruptly to bribe them, so that they would be influenced in their decision pertaining to the Board? Or, rather, did he, with $500 and this set up we have described, isn't it more logical and more consistent, and doesn't it stand the test of reasonable doubt, that when he gave them that money and engaged in that talk, he did so as he said, to get evidence on Dr. Feiler particularly? Evidence of what? Evidence that he was being extorted.

"Now, Mr. Beattie, a representative of the Attorney General, was already in the camp on August 8th. I don't mean the camp, but he was advising Dr. Feiler. The State Police were on his side. Where could this layman (1390) from Chicago go without professional status, and how would he be received if he didn't have some proof positive; and to his mind, right or wrong, at the time, he believed the only way he could present this evidence to the proper authorities was to put it up in such a form that they couldn't turn it down, and with a recording and the testimony of three other men, these Pinkerton fellows, he had it, and he thought, and that is what he wanted, to nail it down, to deliver it to the authorities and let them do what they wanted, based upon the evidence he brought to them:

"*Now, that, in a sense, is the crux of this case.* It is intent. And it must be that he had a corrupt intent, to do only one thing, despite the circumstantial evidence to the contrary, that he had a corrupt intent

to influence these men to do something in reference to their Board." (Emphasis supplied)

Furthermore, in his brief to the Supreme Court of Michigan, petitioner did not raise the question of entrapment as a Federal issue. He claimed that the trial court had erred in his instruction by taking the issue of entrapment away from the jury. The following language from petitioner's brief in the lower court clearly manifests this:

> "that at the very minimum there was presented a factual question for the jury as to whether defendant was entrapped by the extortionate inducements of Dr. Feiler and by the activities of the other board members, police officers and the assistant attorney general, but the Court committed prejudicial and reversible error by instructing the jury that in his view there was no evidence of entrapment;" (p 114)

> "Since there was convincing evidence of extortion practiced by a member of the board upon defendant over a period of years, the prosecution's scheme of entrapment in which the board member participated by continuing his threats, removed the criminality of the act of mere payment of money to public officers, and reversible error was committed by the court when it instructed the jury there was no evidence of entrapment." (p 126)

With reference to the entrapment itself the petitioner sought, both before the jury and the Supreme Court, to make it appear that the certain language used by an Assistant Attorney General was proof that the state officials were attempting to involve Ritholz in a criminal transaction which was not initiated by him. In this statement the Assistant Attorney General advised Dr. Feiler not to be

"too careful of entrapment" when he reported to the Optometry Board the fact that he had been approached by Ritholz to "wash out" the Sanchick case.

However, the language used must be read in context. The statement was made by the Assistant Attorney General after he had been advised that Ritholz had approached Dr. Feiler with the intent of bribing him and the Board. This statement, reviewed in context, makes it clear the Assistant Attorney General was giving a legal opinion that in view of Ritholz's initiation of the proceedings, the State officials could go along with him without being guilty of entrapment. We invite the Court's attention to the following facts which indicate clearly that the bribery transaction originated with the petitioner and was actively promoted by him and that the state officials merely went along with him in his acts.

Dr. Grigware, one of the members of the Optometry Board, testified that Ritholz "called him and asked him to drop the Sanchick charges and that he would refer several hundred patients a year to him, and also threatened him" (314a).

It was Ritholz who suggested to Feiler to have the Sanchick case "washed out" and told him it would be worth a lot of money to do so. On January 12, 1955 petitioner called Dr. Feiler and asked him what he could do about "washing out" the case and told him it would be worth 3 or 4 thousand dollars. Dr. Feiler told him "he didn't think he would do anything about it." (181a) This conversation was repeated by Feiler to an FBI agent and to the Michigan State Police. (184a to 187a) Subsequently, at the request of the Michigan State Police and Detroit police detectives, Dr. Feiler occupied a room at the Sheraton-Cadillac Hotel on January 12, 1955, in which a micro-

phone had been installed by the police; an adjoining room was occupied by the Michigan State Police who were equipped with headphones to overhear the conversation in Dr. Feiler's room. (182a - 183a) The testimony showed that Dr. Feiler was instructed by the police to meet with Ritholz but not to lead him or entrap (him) that he was not to agree to do anything for Ritholz, but was to accept any money offered for use as evidence. (184a) The petitioner telephoned Dr. Feiler and conversed with him, and went to Dr. Feiler's room and there a conversation ensued between them. (185a - 186a) Petitioner brought up the Sanchick case, asked Dr. Feiler what he could do about washing it out and Feiler replied he did not know whether he could do anything as he was only one member of the board. (186a) Petitioner asked Dr. Feiler if he thought half a dozen lawsuits would help and suggested that he would sue the board members as individuals in Federal Court so that they would have to hire attorneys and would be subject to a lien and judgment. Ritholz asked Dr. Feiler if the board members "scare pretty good." Dr. Feiler replied he did not think so and that in the course of the conversation Dr. Feiler said he did not understand what the defendant wanted him to do, and that the petitioner replied "I want you to do just like anything else. You know what to do. Find a way to wash it out. Instead of the lawyers getting the money, I give it to you. It is just as simple as that." (187a - 188a - 396a - 533a - 534a) Ritholz made all the arrangements for the meeting in Lansing where the bribe transaction took place. At the time the bribe was paid, it was Ritholz who offered the bribe and suggested what procedure should be followed by the board to dismiss the Sanchick case, as the Supreme Court of Michigan points out in its opinion.

In view of the cited testimony, the court's instruction was in accordance with the rule laid down in *People v Smith*,

296 Mich 176 at 182, in which the court quoted *Butts v U. S.*, 273 Fed. 35 (18 ALR 143) to the following effect:

> "Where the criminal intent originates in the mind of the defendant, the fact that the officers of the government used decoys or truthful statements to furnish opportunity for or to aid the accused in the commission of a crime, in order successfully to prosecute him therefor, constitutes no defense to such a prosecution."

As a result, the court in this *Smith* case held that defendants were not inspired into crime by police authorities; they merely furnished opportunity or aid in furtherance of an already completed conspiracy in order to acquire evidence of the contemplated crime.

The *Smith* case, we believe, is on all fours with the instant case and refutes defendant's claim of entrapment.

See also *United States v Cerone*, 150 F 2d 382; cert. denied, 66 S. Ct. 98, in which the facts were paralled to those of the instant case and in which the court held, furthermore, there was no entrapment.

From the above it is clear that the trial "court was correct in his comment to the effect that he could remember no evidence which showed that the officers of the law personally or through Board members induced or persuaded the defendant initiated the proceedings which led to the bribe attempt and it was not until then that the officers furnished him with the opportunity he sought of bribing the board." (p. 82). The Court's charge was therefore proper and in accord not only with Michigan rulings but Federal rulings also. No Federal or State rights of respondent were violated thereby.

CONCLUSION

Petitioner was given a fair and impartial trial. He was well and ably represented by counsel, took the stand himself, produced numerous witnesses in his behalf, and cross examined all the People's witnesses at length. He was thus able to present to the jury all the evidence which was available to him. The trial Court was fair and impartial in its treatment of petitioner and its instructions to the jury, which found him guilty.

Proof of petitioner's guilt was overwhelming. Witnesses testified who participated in the transaction, and most important of all, petitioner admitted that he attempted to bribe the board members. He sought to evade the consequences of his admission by presenting the claim that he made the bribe attempt in order to obtain evidence which would be used by him to entrap the board members in order to prevent further extortion upon him. The jury disbelieved this story, and we agree that their verdict was proper. A significant factor which we believe contributed to the jury's conclusion that petitioner's story was incredible, is this: Petitioner, an experienced and successful businessman — and a lawyer in the bargain — admitted on the stand that at no time did he use the simple and common sense means of protecting himself which were in his power — that is, the filing of a complaint with law enforcement officers, either in Illinois or Michigan, who would have used all resources of both States to protect him.

RELIEF

For the above reasons, it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

PAUL L. ADAMS
Attorney General of the State of Michigan

SAMUEL J. TORINA
Solicitor General of the State of Michigan

Counsel for Respondent